

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI, INC., OPENAI LP, OPENAI GP, LLC, OPENAI, LLC, OPENAI OPCO LLC, OPENAI GLOBAL LLC, OAI CORPORATION, LLC, and OPENAI HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195 (SHS) (OTW)

Daily News, LP; Chicago Tribune Company, LLC; Orlando Sentinel Communications Company, LLC; Sun-Sentinel Company, LLC; San Jose Mercury News, LLC; DP Media Network, LLC; ORB Publishing, LLC; and Northwest Publications, LLC

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Civil Action No. 1:24-cv-3285 (SHS) (OTW)

DECLARATION OF JENNIFER B. MAISEL

I, Jennifer B. Maisel, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney at Rothwell, Figg, Ernst & Manbeck, P.C., which represents Plaintiffs The New York Times Company (“The Times”) and Daily News, LP et al. (“Daily News”) (collectively, the “News Plaintiffs”) in this case. I submit this declaration on behalf of the News Plaintiffs in support of the News Plaintiffs’ Supplement Status Letter regarding their inspection of

OpenAI's training data. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would competently testify as to these facts under oath.

2. Since November 1, 2024, the News Plaintiffs have spent over 150 person-hours searching OpenAI's training data for instances of the News Plaintiffs' Asserted Works. The News Plaintiffs stored the results of their searches on two dedicated virtual machines provided by OpenAI.

3. On November 14, 2024, the News Plaintiffs learned that OpenAI's engineers erased all of the News Plaintiffs' programs and search result data that was stored on one of the dedicated virtual machines. During a meet and confer held November 15, 2024, OpenAI confirmed that the News Plaintiffs' programs and search result data had been erased.

4. On November 19, 2024, the News Plaintiffs determined that the data OpenAI was able to recover, which does not include the original folder structure and original file names, is unreliable and cannot be used to determine where the News Plaintiffs' copied articles were used to build Defendants' models.

5. On November 19, 2024, the News Plaintiffs informed OpenAI that they intended to file a status letter to update the Court on the issues associated with their inspection of OpenAI's training data. The News Plaintiffs asked if OpenAI wished to file the status letter jointly. OpenAI declined the News Plaintiffs' offer.

6. I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of November, 2024.

/s/ Jennifer Maisel
Jennifer B. Maisel